No. 18-485

IN THE

Supreme Court of the United States

EDWARD G. MCDONOUGH,

Petitioner,

v.

YOUEL SMITH, INDIVIDUALLY AND AS SPECIAL DISTRICT ATTORNEY FOR THE COUNTY OF RENSSELAER, NEW YORK, AKA TREY SMITH,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF *AMICUS CURIAE* CAUSE OF ACTION INSTITUTE IN SUPPORT OF PETITIONER

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March 4, 2019

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

QUESTION PRESENTED

Whether the statute of limitations for a Section 1983 claim based on fabrication of evidence in criminal proceedings begins to run when those proceedings terminate in the defendant's favor (as the majority of circuits has held) or whether it begins to run when the defendant becomes aware of the tainted evidence and its improper use (as the Second Circuit held below).

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iv
INTEREST OF THE *AMICUS CURIAE*	1
SUMMARY OF ARGUMENT	2
ARGUMENT	4
I. The Second Circuit Adopted an Improperly Narrow View of the Harm Caused by Fabricated Evidence	4
II. Having Section 1983 Claims Accrue During the Related Criminal Proceeding Will Traduce the Rights of the Accused and Waste Prosecutorial Resources	10
III. Early Accrual Contravenes the Ripeness Doctrine and Wastes Judicial Resources	12
IV. Having Claims Accrue at the Conclusion of Criminal Proceedings Avoids These Problems	16
CONCLUSION	18

TABLE OF AUTHORITIES

CASES Page(s)

Alabama v. Smith,
490 U.S. 794 (1989) 11

Ashcroft v. Iqbal,
556 U.S. 662 (2009) 3, 11, 14, 17

Bell Atlantic Corp. v. Twombly,
550 U.S. 544 (2007) 3, 11, 17

Commonwealth v. Cotto,
No. 2007770, 2017 WL 4124972
(Mass. Super. June 26, 2017) 6

DeCoster v. United States,
137 S. Ct. 2160 (2017) 2

Frazier v. Cupp,
394 U.S. 731 (1969) 13

Hazel-Atlas Glass Co. v. Hartford-Empire Co.,
322 U.S. 238 (1944) 5

Heck v. Humphrey,
512 U.S. 477 (1994) 4, 12, 14, 16

Hobson v. Wilson,
737 F.2d 1 (D.C. Cir. 1984) 3. 9

Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit,
507 U.S. 163 (1993) 3, 9

Lozman v. City of Riviera Beach, Fla.,
138 S. Ct. 1945 (2018) 11

Lozman v. City of Riviera Beach,
681 F. App'x 746 (11th Cir.) 11

Marinello v. United States,
138 S. Ct. 1101 (2017) 2

TABLE OF AUTHORITIES—Continued

Page(s)

McCutcheon v. Fed. Election Comm'n,
134 S. Ct. 1434 (2014) 1

McDonough v. Smith,
898 F.3d 259 (2d Cir. 2018) 2, 8

McDonough v. Smith,
No. 1:15-CV-01505, 2016 WL 5717263
(N.D.N.Y. Sept. 30, 2016) 2

Order of R.R. Telegraphers v. Ry. Express Agency,
321 U.S. 342 (1944) 10

Oregon v. Mathiason,
429 U.S. 492 (1977) 13

Overton v. United States,
137 S. Ct. 1248 (2017) 2

Texas v. United States,
523 U.S. 296 (1998) 12

Thomas v. Union Carbide Agricultural Products Co.,
473 U.S. 568 (1985) 12

Timbs v. Indiana,
No. 17-1091 (2019) 2

United States v. Black,
No. CR 12-0002 (N.D. Cal.) 2

Wallace v. Kato,
549 U.S. 384 (2007) ..... *passim*

Yates v. United States,
135 S. Ct. 1074 (2015) 2

TABLE OF AUTHORITIES—Continued

STATUTES

42 U.S.C. § 1983 ..... *passim*

OTHER AUTHORITIES

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM: REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2017 (May 2018), *available at* https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf 10

Cause of Action Inst., *About*, www.causeofaction.org/about (last visited Nov. 12, 2018) 1

Corina D. Gerety, *Excess and Access: Consensus on the American Civil Justice Landscape*, INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM (Feb. 28, 2011), *available at* http://iaals.du.edu/publications/excess-and-access-consensus-american-civil-justice-landscape... 10

DA Ogg Announces Review Of 1,400 Cases, OFFICE OF THE DISTRICT ATTORNEY, HARRIS COUNTY, TEXAS (Feb. 20, 2019) *available at* https://app.dao.hctx.net/da-ogg-announces-review-1400-cases..... 7

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TABLE OF AUTHORITIES—Continued

Page(s)

Former State Trooper Explains Ways He Fabricated Evidence, NEW YORK TIMES (April 16, 1993), *available at* https://www.nytimes.com/1993/04/16/nyregion/former-state-trooper-explains-ways-he-fabricated-evidence.html 7

Jessica Lussenhop, *When Cops Become Robbers*, BBC (April 3, 2018), *available at* https://www.bbc.co.uk/news/resources/idt-sh/when_cops_become_robbers..... 5

Justin Fenton, *'Everything on the Table' as Commission Begins Examining Corrupt Baltimore Police Gun Trace Task Force*, THE BALTIMORE SUN (October 16, 2018), *available at* https://www.baltimoresun.com/news/maryland/crime/bs-md-ci-gttf-commission-first-meeting-20181016-story.html 5

Mark V. Holden, *The Second Chance: A Movement to Ensure the American Dream*, 87 UMKC L. Rev. 61 (2018) 8

Sarah Mervosh, *Houston Officer Lied About Confidential Informant in Deadly Drug Operation, Chief Says*, NEW YORK TIMES (Feb. 16, 2019), *available at* https://www.nytimes.com/2019/02/16/us/houston-police-gerald-goines.html 6

TABLE OF AUTHORITIES—Continued

Page(s)

Shira Schoenberg, *SJC Will Decide How to Reimburse Dookhan, Farak Defendants*, MASS LIVE (Sept. 13, 2018), *available at* https://www.masslive.com/politics/index.ssf/2018/09/sjc_will_decide_how_to_reimbur.html 6, 13

BRIEF OF *AMICUS CURIAE* CAUSE OF ACTION INSTITUTE IN SUPPORT OF PETITIONER

Pursuant to Supreme Court Rule 37.2, Cause of Action Institute ("CoA Institute") respectfully submits this *amicus curiae* brief in support of petitioner.[1]

INTEREST OF THE *AMICUS CURIAE*

Amicus curiae CoA Institute is a 501(c)(3) nonpartisan, nonprofit strategic oversight group committed to ensuring that government decision-making is open, honest, and fair.[2] CoA Institute uses various investigative, legal, and communications tools to educate the public on how government accountability, transparency, and the rule of law protect liberty and economic opportunity. As part of this mission, it works to expose and prevent government and agency misuse of power by, *inter alia*, representing third-party plaintiffs in actions against the federal government and appearing as *amicus curiae* before this and other federal courts. *See, e.g.*, *McCutcheon v. Fed. Election Comm'n*, 134 S. Ct. 1434, 1460 (2014) (citing brief).

CoA Institute has a particular interest in challenging government overreach in the criminal justice system and ensuring government accountability

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[1] Counsel of record for all parties received notice prior to the due date of the *amicus curiae*'s intention to file this brief. All parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

[2] *See* Cause of Action Inst., *About*, www.causeofaction.org/about (last visited Nov. 12, 2018).

in maintaining the rule of law. In order to fulfill this mission, CoA Institute has represented criminal defendants in federal court, *e.g.*, *United States v. Black*, No. CR 12-0002 (N.D. Cal.), appeared as *amicus curiae* in *Yates v. United States*, 135 S. Ct. 1074 (2015), and appeared as *amicus curiae* in other criminal matters before this court. *See, e.g.*, *DeCoster v. United States*, 137 S. Ct. 2160 (2017); *Overton v. United States*, 137 S. Ct. 1248 (2017), *Marinello v. United States*, 138 S. Ct. 1101 (2017), and *Timbs v. Indiana*, No. 17-1091 (2019).

SUMMARY OF ARGUMENT

Prior to the ruling below by the Second Circuit, appellate courts uniformly analogized Section 1983 claims accusing government agents of using fabricated evidence to claims of malicious prosecution. As a result, these courts ruled that such claims accrued after criminal proceedings terminated in the defendant's favor. The Second Circuit instead decided that such claims are unlike malicious prosecution and therefore accrue when a defendant was first aware "that such [fabricated] evidence was being used," as this was when the defendant "knew or should have known" about the harm suffered.[3]

By employing this standard, the Second Circuit ruling denies the nature of fabricated evidence. Adoption of its novel rule would muddy ongoing criminal proceedings, squander judicial resources, create a Hobson's choice for Defendants, and impose an

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[3] *McDonough v. Smith*, 898 F.3d 259, 264 (2d Cir. 2018), (quoting *McDonough v. Smith*, No. 1:15-CV-01505, 2016 WL 5717263, at *11 (N.D.N.Y. Sept. 30, 2016)).

improperly narrow view of how fabricated evidence harms those it is used against.

Defendants in ongoing criminal proceedings, if asked to simultaneously act as civil plaintiffs, will be unable to effectively exercise their rights in either system. Relying on an expectation that civil proceedings will be stayed to mitigate the harm of this ruling is inadequate given the pleading standards introduced by *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), as a civil complaint will require the accused to make statements about their case with exacting particularity. Even if those pleading standards had not been introduced, the creation of a class of civil suits which only exist to be stayed is illogical, will often contravene the doctrine of ripeness, and will shrink the already small number of attorneys available to take such cases.

Additionally, as this case demonstrates, it may be extremely difficult for a criminal defendant to know whether evidence is being fabricated by a state actor or if other bad actors are simply lying or creating false evidence for their own purposes. This is particularly the case when the government actor files materials before a court denying the allegations, as this acts as effective concealment of the wrong, and when found alongside diligence by the plaintiff, should toll any running of the statute.[4]

This Court briefly touched on some of these issues in *Wallace v. Kato*, 549 U.S. 384 (2007). However, that case considered a wholly different type of Section 1983 claim, was decided before *Twombly* and *Iqbal*, and

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[4] *Hobson v. Wilson*, 737 F.2d 1, 33 (D.C. Cir. 1984), *overruled in part on other grounds, Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163 (1993).

referenced only civil cases entirely unrelated to the extant criminal matter, e.g. "a breach of contract claim against the prime contractor for [a defendant's] new home."[5] The Section 1983 claims at issue here involve statements and evidence from the same events as the criminal matter. This creates several complications and obliges parties to engage in the same type of speculative behavior and collateral attacks the Court disfavored in *Wallace* and its earlier related decision, *Heck v. Humphrey*, 512 U.S. 477 (1994). Such attacks against an ongoing criminal proceeding are equally disruptive as those against a conviction, if not significantly more so.

For these reasons, we urge the Court to adopt the approach used by the majority of circuit courts and designate the conclusion of criminal proceedings as the accrual date for claims of fabricated evidence.

ARGUMENT

I. The Second Circuit Adopted an Improperly Narrow View of the Harm Caused by Fabricated Evidence

The Court should evaluate the nature of this type of Section 1983 claim mindful of the severity and frequency of the misconduct at issue. Fabricated evidence is not a black swan; it is an invasive species.

Few doubt the seriousness of this misconduct. This Court has previously stated that false evidence "involves far more than an injury to a single litigant" and is "a wrong against the institutions set up to protect and safeguard the public, institutions in which

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[5] *Wallace v. Kato*, 549 U.S. 384, 396 (2007).

fraud cannot complacently be tolerated consistently with the good order of society."[6]

The type of fraud at issue here is alarmingly frequent and perpetrated by a variety of state actors. The pressure to achieve results – or simply the opportunity to exploit power – has led to both individual examples of fabricating evidence and a series of high-profile scandals in which state actors committed such fraud *en masse* over lengthy periods of time.

In Baltimore, Maryland, a police unit known as the Gun Trace Task Force recently engaged in a pattern of falsifying evidence as part of a widespread criminal scheme. The unit was designed to track the firearms responsible for a record rate of homicides in Baltimore by wearing plain clothes and using unmarked vehicles. Instead, the unit became corrupted to the point where "almost every member" of it was arrested and nearly 1,700 criminal cases were compromised due to misconduct such as planting drugs on innocent people.[7] The city has yet to determine how this fabrication became so pervasive; a state task force convened to examine the subject had its first meeting late last year.[8]

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[6] *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944).

[7] Jessica Lussenhop, *When Cops Become Robbers*, BBC (April 3, 2018), *available at* https://www.bbc.co.uk/news/resources/idt-sh/when_cops_become_robbers.

[8] Justin Fenton, *'Everything on the Table' as Commission Begins Examining Corrupt Baltimore Police Gun Trace Task Force*, THE BALTIMORE SUN (October 16, 2018), *available at* https://www.baltimoresun.com/news/maryland/crime/bs-md-ci-gttf-commission-first-meeting-20181016-story.html.

Police officers are not the only state actors engaging in such behavior. In one recent scandal, a single Massachusetts lab technician fabricated evidence affecting *36,000* defendants.[9] This incident was not even unique in its own laboratory – unrelated misconduct by another technician required the dismissal of 10,000 additional cases.[10] Remarkably, the misconduct continued outside the laboratory, as further "fraud upon the court" was committed by two state assistant attorneys general who "tampered with the fair administration of justice" by manipulating evidence after the laboratory scandal had become public knowledge.[11]

When these fabrications occur outside of the laboratory, they can have fatal consequences. A police officer in Houston, Texas recently acquired a no-knock warrant by stating that an informant had bought drugs from a local house. Police stormed the house and killed the couple residing there, each of whom was in their late 50s. Five police officers were shot as well. No evidence of drug dealing was discovered, however, and the city's chief of police soon admitted that the warrant was based on "material untruth or lies," as the informant did not exist.[12] The FBI has now opened

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[9] Shira Schoenberg, *SJC Will Decide How to Reimburse Dookhan, Farak Defendants*, MASS LIVE (Sept. 13, 2018), *available at* https://www.masslive.com/politics/index.ssf/2018/09/sjc_will_decide_how_to_reimbur.html.

[10] *Id.*

[11] *Commonwealth v. Cotto*, No. 2007770, 2017 WL 4124972, at *34 (Mass. Super. June 26, 2017).

[12] Sarah Mervosh, *Houston Officer Lied About Confidential Informant in Deadly Drug Operation, Chief Says*, NEW YORK TIMES (Feb. 16, 2019), *available at* https://www.nytimes.com/2019/02/16/us/houston-police-gerald-goines.html.

an investigation into the seeming use of "false, fabricated information."[13] Thirty-five years of work by the officer is under review by the district attorney, encompassing 1,400 cases.[14]

Those accused of drug-related crimes are not the only parties wronged by fabricated evidence. The first scandal of this nature to engulf the New York State Police involved the decidedly low-tech method of photocopying fingerprints and was used against innocent defendants accused of crimes as serious as murdering a family of four.[15]

State actors who enforce regulations against companies may also engage in fabrication of evidence. In one such case, an oil refinery learned an employee had submitted a false report to regulators. The company fired the employee, voluntarily disclosed the issue, and brought the refinery back into compliance. The federal government nonetheless decided to prosecute four employees for the incident and issued indictments on ninety-seven counts. There was just one problem – the prosecution was based on fabricated evidence. A state actor had deleted key portions of the record when submitting it to a grand jury, removing the voluntary self-disclosure

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[13] *FBI Houston News Release*, FBI HOUSTON (Feb. 20, 2019), *available at* https://twitter.com/FBIHouston/status/1098350397578719233.

[14] *DA Ogg Announces Review Of 1,400 Cases*, OFFICE OF THE DISTRICT ATTORNEY, HARRIS COUNTY, TEXAS (Feb. 20 2019) *available at* https://app.dao.hctx.net/da-ogg-announces-review-1400-cases.

[15] *Former State Trooper Explains Ways He Fabricated Evidence*, NEW YORK TIMES (April 16, 1993), *available at* https://www.nytimes.com/1993/04/16/nyregion/former-state-trooper-explains-ways-he-fabricated-evidence.html.

completely.[16] All charges were eventually dropped against the employees, but only after years of unnecessary and harrowing legal proceedings. The company in this incident was fortunate to be among the largest in America and possess the resources to defend itself and its employees. Yet smaller companies will be far less able to recover from the harm that fabricated evidence inflicts on their operations and reputation.

The decision below increases the odds that such myriad wrongs will not be righted. The Court itself has good reason to reverse the Second Circuit so that incidents like this are more likely to be exposed and redressed. As discussed in Sections II and III, *infra*, the Second Circuit has created a rule which introduces numerous roadblocks to filing Section 1983 claims for fabricated evidence and serves no significant purpose. Additionally, by treating such claims as having accrued at defendant's first exposure to evidence he believes fabricated, it failed to understand how such claims differ from other Section 1983 claims such as those for false arrest. Fabricating evidence is not an incarceration with a distinct period, nor is it an object which is discarded after its initial use.[17] It is bound with the proceedings into which it was introduced for as long as those proceedings continue or can be renewed. Like any piece of evidence, it may be raised in opening statements, with multiple witnesses, and at closing arguments. The jury may consider this evidence, ask questions about it, or even base its verdict on it. Its significance can only be fully measured by defendants and courts after it has been

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[16] Mark V. Holden, *The Second Chance: A Movement to Ensure the American Dream*, 87 UMKC L. Rev. 61 (2018).

[17] *McDonough v. Smith*, 898 F.3d 259, 267 (2d Cir. 2018).

introduced and challenged at the criminal proceeding itself.

It must also be noted that, in this case, the subject of the Section 1983 claim "swore before the Court that he did not 'forge' or execute any affidavit in place of any witness."[18] In fact, the accused prosecutor in affirmation "painstakingly explained the procedure he implemented in having witnesses execute 190.30 affidavits."[19]

Such actions on the part of the accused prosecutor amount to concealment of the wrong and toll the statute of limitations. While "the case law reflects a variety of formulations" of the federal fraudulent concealment doctrine, the "keystone" of this doctrine consists of two factors: concealment by the wrongdoer and diligence by the wronged party.[20] Concealment is found when a party "contrives to commit a wrong in such a manner as to conceal the very existence of a cause of action, and [] misleads plaintiff in the course of committing the wrong."[21] Combined with the demonstrated diligence by plaintiff, the doctrine of tolling via fraudulent concealment applies.[22]

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[18] Joint Appendix at 306.

[19] *Id.*

[20] *Hobson, supra* note 4 at 33-4.

[21] *Id.* at 33. While "concealment by silence" may not have been sufficient, the sworn denials made by Smith to the trial court take us well beyond any such grey area.

[22] The 1,220 paragraph complaint submitted by plaintiff understandably complicated the district court's inquiry, but it cannot be criticized for failing to document the diligence demonstrated by petitioner in pursuing the fabrication claims.

Moreover, one of the rationales of statutes of limitations is that the accused is on notice that there are claims against him.[23] Smith, the defendant in this case, had a view of those claims, and no surprise or unfairness could be ascribed to the bringing of the civil suit after the close of prosecution given his on-the-record denials of any fabrication before the criminal court.

II. Having Section 1983 Claims Accrue During the Related Criminal Proceeding Will Traduce the Rights of the Accused and Waste Prosecutorial Resources

The barriers to filing a complex civil lawsuit in federal court were already substantial before the Second Circuit ruling in this case. The filing fee alone is more than a majority of U.S. households have saved in case of emergency.[24] The median cost of the subsequent civil lawsuit is nearly 40 times this amount.[25] By definition, a defendant facing imprisonment due

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[23] *Order of R.R. Telegraphers v. Ry. Express Agency*, 321 U.S. 342, 348-9 (1944).

[24] BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM: REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2017 (May 2018), *available at* https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf.

[25] Corina D. Gerety, *Excess and Access: Consensus on the American Civil Justice Landscape*, INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM (Feb. 28, 2011), *available at* http://iaals.du.edu/publications/excess-and-access-consensus-american-civil-justice-landscape. This includes all federal civil cases, but it is almost certainly higher for Section 1983 cases due to the low likelihood of settlement.

to fabricated evidence is carrying an even heavier burden – he is facing state actors who are willing to break the law they purportedly enforce.

Even if a defendant overcame these obstacles and filed a timely Section 1983 lawsuit while facing criminal charges, the mere act of doing so would complicate his ability to defend against those charges effectively. First, it will create an additional adversarial relationship between criminal defendant and state agent, raising the threat of defendants being "punished" for filing civil actions. Such prosecutorial vindictiveness is sufficiently common to have a line of case law from this Court.[26] Retaliation by police officers and political officials against citizens who complain about official misconduct is also a well-known and well-litigated phenomenon.[27]

Second, when this Court last spoke on this issue in *Wallace*, it had not yet issued decisions in *Iqbal* and *Twombly*. The pleading standards established by these cases now require criminal defendants such as the petitioner to discuss with specificity the events which resulted in their prosecution. This puts them in a nearly impossible position. The more detail included in a civil filing, the higher chance it survives a motion to dismiss – but also a higher chance those details will be used in the still-ongoing criminal matter.

The complications of concurrent proceedings do not solely affect the criminal defendant. Just as that party

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[26] *Alabama v. Smith*, 490 U.S. 794, 798 (1989) (discussing a significant number of Supreme Court cases establishing and construing the prosecutorial vindictiveness doctrine).

[27] *See, e.g., Lozman v. City of Riviera Beach*, 681 F. App'x 746, 749 (11th Cir.), *vacated and remanded sub nom. Lozman v. City of Riviera Beach, Fla.*, 138 S. Ct. 1945 (2018).

must file a civil lawsuit while involved in a criminal matter, the government agents whose behavior is the subject of the Section 1983 claim must defend themselves while continuing their duties. At a minimum, this will require responding to the initial filing, and it may include more intrusive steps such as depositions and discovery about complex issues of subjective intent and objective law, with the result being a trial-within-a-trial concurrent with the criminal proceeding. Requiring Section 1983 lawsuits for fabricated evidence to be filed at this stage will functionally mandate collateral attacks on the validity of ongoing criminal proceedings, triggering many of the same concerns about finality and consistency expressed by the Court in *Heck*.[28] This policy would also be at odds with the existence and underlying purpose of the qualified immunity doctrine, which is to simplify the performance of official duties.

III. Early Accrual Contravenes the Ripeness Doctrine and Wastes Judicial Resources

By declaring Section 1983 claims to accrue at the moment a defendant becomes aware of fabricated evidence, the Second Circuit effectively asks criminal defendants to walk directly from the police station to the courthouse. This creates a dynamic in which timely lawsuits will in many cases be unripe.

As defined by this Court, "a claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all."[29] This contingency is present in myriad

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[28] *Heck v. Humphrey*, 512 U.S. 477, 484-5 (1994).

[29] *Texas v. United States*, 523 U.S. 296, 300 (1998) (internal quotation marks omitted) (quoting *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568, 581 (1985)).

ways here. A defendant presented with false evidence is virtually never going to have proof of its fabrication by those acting under color of law when initially confronted with such evidence. Yet the ruling below requires criminal defendants to immediately tell the difference between a mistaken eyewitness, one lying for his own benefit, and one lying due to state fabrication – or the difference between laboratory error and laboratory fraud, the latter of which is often documented years later and in thousands of cases at once.[30] What seems like fabricated evidence may not even exist at all given the Court's allowance of police to use deceptive tactics during interrogations in order to induce confessions.[31] Police officers can concoct witness statements and cite physical evidence that doesn't exist when interrogating suspects, a power which muddies the evidentiary picture even further for defendants attempting to understand and exercise their rights. [32] Despite this thicket of possible situations and explanations, only a few of which justify Section 1983 litigation, the Second Circuit ruling means that a defendant's claim is purportedly "complete and present" the moment he first hears of any evidence he believes untrue.[33]

Just as defendants will be unprepared to properly plead these lawsuits under the Second Circuit's decision, courts will be unprepared to properly judge their merits. It is wasteful to devote judicial resources to claims based only on a criminal defendant's initial exposure to false evidence. This Court made clear in

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[30] Schoenberg, *supra* note 9.

[31] *Frazier v. Cupp*, 394 U.S. 731 (1969).

[32] *Oregon v. Mathiason*, 429 U.S. 492 (1977).

[33] *Wallace*, *supra* note 5, at 384.

Iqbal that conclusions are not sufficient to support a claim, but what else can a criminal defendant offer at such a nascent stage of proceedings in support of a claim of fabrication than the conclusion that prosecutors or police must be responsible? As happened here, the accused state actor can simply submit sworn affirmations denying any Section 1983 violation happened without being cross-examined or having any discovery issue. Such a wide gap between when a claim accrues and when it can be realistically pleaded under modern standards does not serve the interests of justice. As criminal trials progress, including through appeals, the source and validity of evidence are brought into the open and challenged as part of the adversarial process. Witnesses often change or recant their stories, and physical evidence is shown to be unreliable or reexamined in a wider context. Only after this examination of the evidence has concluded will Section 1983 claims of fabricated evidence be ready for adjudication.

This Court indicated in *Wallace* that stays of civil actions "until the criminal case or the likelihood of a criminal case is ended" were sufficient to avoid incomplete or speculative claims.[34] That conclusion should not be extended here. First, as noted in Section I, claims for fabricated evidence are inherently different in nature and severity than those for false arrest, the claim at issue in *Wallace*. Such arrests are pre-trial violations which end the moment a defendant is arraigned or otherwise detained pursuant to legal process.[35] Second, it cannot be assumed that stays will be issued. Courts are under no obligation to stay

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[34] *Id.* at 394.

[35] *Heck, supra* note 28, at 484.

a proceeding if the complaint contains insufficient detail to satisfy pleading standards, a situation likely here for reasons unrelated to the merits of the claim. Third, a reliance on stays assumes that lawsuits can be brought in the first place. As discussed in Section II, additional statements related to the criminal matter will complicate the defense in that matter, and a concurrent civil suit is a significant burden on those already mounting such a defense. Few criminal defense attorneys would ever advise a client to file a concurrent civil suit as a result.

The dramatically elongated timeline envisioned by reliance on stays will shrink the already limited number of attorneys willing to bring Section 1983 civil suits. As posited by *Wallace* and the Second Circuit decision here, there are only two possible outcomes for a fabrication of evidence due process lawsuit filed when first timely – a stay until completion of a criminal trial or a concurrent proceeding with that trial. The stay comes with all the uncertainty of what may come to light during a trial and the animus of those accused of fabrication, and the concurrent proceedings mean representing a client with momentous other demands on their time, resources, and loyalties. Neither is an appealing proposition for plaintiffs' lawyers being asked to steward complex litigation against state actors.

The question of remedy is also complicated by early accrual. A timely Section 1983 lawsuit filed during a criminal proceeding faces numerous questions about what remedy or damages are appropriate, many of which hinge on the resolution of that criminal proceeding. If the civil court finds that evidence was fabricated, it can hardly dictate to a separate criminal tribunal that such evidence be withdrawn. Yet any

other remedy leaves open the surreal possibility that a criminal defendant could win in civil court and then be convicted based on the very evidence found to have been fabricated. This goes against the "strong judicial policy against the creation of two conflicting resolutions arising out of the same or identical transactions."[36] Nor can we expect a criminal defendant to properly plead damages when the extent of the harm caused by the fabricated evidence is unknown. The use of fabricated evidence is always a severe affront to justice, but even the damage caused by an unsuccessful prosecution pales in comparison to one that ends with a wrongful conviction.

IV. Having Claims Accrue at the Conclusion of Criminal Proceedings Avoids These Problems

There is a clear solution to these conundrums, a point at which certainty exists for all parties: the end of the criminal proceeding. As noted in *Wallace*, defendants whose proceedings end with a conviction are expected to address that conviction via appeal, writ of habeas corpus, executive order, or other means of having it declared invalid before filing a Section 1983 claim which would impugn the conviction.[37] The reason for this is made clear: Section 1983 claims, and civil tort actions in general, should not serve as collateral attacks.[38]

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[36] *Id.* (quoting 8 S. Speiser, C. Krause, & A. Gans, American Law of Torts § 28:5, 24 (1991)).

[37] *Wallace*, *supra* note 5, at 392 (quoting *Heck v. Humphrey*, 512 U.S. 477 (1994)).

[38] *Id.*

The same logic applies without a conviction. While the petitioner here was ultimately acquitted, he should not be punished for having allowed an ongoing criminal process to conclude – and the purportedly fabricated evidence to be openly challenged – before filing a civil lawsuit claiming illegal behavior by those conducting the process. We recognize that a criminal defendant is not "absolved from all other responsibilities that the law would otherwise place upon him."[39] Yet the necessity of a fully-developed record is clear in equipping defendants and courts with the information required to properly plead and adjudicate claims of fabricated evidence, particularly since the decisions in *Iqbal* and *Twombly*. Section 1983 claims such as those of the petitioner are legal obligations directly tied to the criminal proceeding. Having that proceeding conclude first is the appropriate way to address the intolerable wrong of fabricated evidence, conserve prosecutorial and judicial resources, and serve the interests of justice. The majority of circuits are correct, and the Court should so rule.

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[39] *Id.* at 396.

CONCLUSION

For the foregoing reasons, the Court should find that fabricated evidence claims accrue at the conclusion of criminal proceedings.

Respectfully submitted,

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March 4, 2019